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Notes on the early history of
the Brig of Balgowny

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NOTES

ON THE EARLY HISTORY

OF

The Brig of Balgowny, //

AND

ILLUSTRATIVE OF THE POSITION AND LEGAL ASPECT OF

THE FUND CONVEYED

BY

SIR ALEXANDER HAY OF WHYTBURGH AND NEWTON,

FOR

ITS REPAIR AND MAINTENANCE,

KNOWN AS

THE BRIDGE OF DON FUND.

*Compiled for the information of Members of the Town Council of
Aberdeen, by WILLIAM PAUL, Advocate in Aberdeen, Convener of
the Council's Law Committee.*

1876.

*The letter by
Arthur Chalmers.*

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P R E F A C E.

THE narrative which occupies the following pages is simply the expansion of Notes made for my own use in studying a case which is rather intricate. It occurred to me that the Members of the Town Council might be aided in forming an opinion on a subject of very great importance to the Town of Aberdeen, by having before them, in a collected and easily accessible form, the whole known facts connected with the history of the Bridge of Don, and the relations of the Town and County towards it. The preparation of this statement, imperfect as it is, has led me to pursue investigations in more than one direction, where a defect in the historical chain of events seemed to exist. These researches, in which Mr. Francis Shaw has rendered valuable assistance, have been attended by success, and the information obtained appears to me to bring the case more clearly than was previously supposed, within the judgment of the House of Lords in the appeal to the Court of last resort, by King's College, Aberdeen, in reference to the Leys Bursars. At the risk of being unduly prolix, I have troubled the Council with rather a lengthened examination of that case. Its bearing on the formation of a sound opinion on a difficult question is very important. So also is that of the case *Attorney-General v. Mayor of Bristol*, which I have also referred to at some length.

W. P.

ABERDEEN, *March*, 1876.

The Brig of Balgowny.

“BRIG O’ BALGOWNY, WICHT’S THY WA’.”

It is believed that the Bridge over the river Don, called the Brig of Balgowny or Pulgowny, was erected by direction, and at the expense of, “a most potent Prince, Robert Bruce, King of Scotland, of blessed memory.” It is certain that, since the year 1444, it has been under the care and management of the Town Council of Aberdeen, who, for nearly two centuries, kept it in repair by means of funds provided by the liberality of the citizens. At length, in the early part of the seventeenth century, the Bridge was almost re-built at the cost of the community, aided by contributions raised in the town and neighbourhood by the efforts of the Council. It is equally certain that the Barons and Landowners in the County were deaf to all entreaties for aid, and refused assistance when the Bridge was in imminent danger of becoming a ruin.

The Council Records contain frequent reference to the outlay occasioned by its maintenance.

In 1444, the Council granted to Sir William Ettale Chaplain and Procurator of the Bridge of Pulgowny, for the repair of the same, the entry dues of a Burgess of Guild.

Nine years afterwards, in 1453, the Dean of Guild credited in his Accounts the oblations received, in the course of the

year, at the Chapel attached to the Bridge. These offerings amounted to £3 15s. Scots; and a statement is preserved of the outlay incurred by him in the same year in repairing the Bridge. The items are given below—

*Computum Ricardi de Kyntor Decani de Gylde redditum
apud Aberdene quinto die Mensis Octobris 1453.*

Item gyffyne ye Masonys for ye mendyng of ye Bryg of Balgony,	£24 0 0
Item XII. stane and a-half of Irne to ye Bryg and ye Key—ye pryss of ye stane III sh., ye soum,	1 17 6
Item to a wechtis of Irne,	0 5 4
Item for ye makyng of ye said Irne,	0 15 2
Item for V. chalder of lyme to ye bryg ande key and for ye houssyng of it,	1 15 0
Item for haffyng of lyme to ye bryg,	0 5 0
Item for sande,	0 5 0
Item for haffing round of burdes and trees,	0 5 0
Item for haddyr peatis and collis,	0 2 0
Item for pyk,	0 4 0
Item for trees to proppis,	0 1 0
Item to ye Wrychtis,	0 2 0
Item to Master Robert Massoun,	0 8 0
Item to my costis and Sir Jon. of Pitymoyings,	0 10 0
Item to Wyll Gyffart for ye Reill,	1 5 0
Item for ye haffyng of her rounde,	0 2 0
Item for barrowis, trais, schullis, ryddyllis,	0 1 6
Item for rapis to ye reill,	0 2 0
Item for ye fylling of ye reill with stanys to ye key ande bryngyng hame of her, and lopyng of her,	0 6 0
Summa hujus,	£32 11 6

In 1562, “the haill toune being convenit,” it was resolved to apply part of the “money gottin for the silver wark, brassin “wark, keipis, and ornamentis of thair paroche kirk,” to the “biging and restaurectioun” of the Bridge; and in 1587, an

appeal was made to Parliament for assistance, but without practical result.

In the same year, a general meeting of the inhabitants was called, when "it was exponit to thame quhow that the brig of Done is becum ruinous and (it) will be verray hurtfull and preiudiciall to this town gif the same be nocht reparit and biggit in dew tyme, seeing it is the speciall brig quhair the haill vivaris and others cumis to this town out of Buchane, Gareauche, and otheris partis circumiacent thairabout."

For an object so important the town imposed a tax of 400 merks, or if need were, 500 merks.

It is recorded that, in 1604, application was made to the Barons of the Sherifffdom for assistance in repairing the Bridge, but it does not appear, from the proceedings of the head court of the shire, held on 8th January, 1605, that they consented to make any contribution for the purpose.

At this period the Bridge was in a very ruinous state, and craftsmen, who were employed by the Town Council to inspect it and report, estimated that the necessary repairs would cost 5000 merks (£3,333 6s. 8d. Scots, or £277 15s. 6d. sterling). There was no fund available for this purpose, or for the ordinary maintenance of the Bridge, except such contributions as the Town could, from time to time, afford to make. By this means only was it preserved from utter ruin, as the Landed Proprietors steadily refused to render any assistance.

In this juncture, the attention of Mr., afterwards Sir, Alexander Hay of Whytburgh, one of the Clerks of Session, (afterwards, one of the Lords of Session, with the title of Lord Newton, and, also, Clerk Register), was directed to the position of the Bridge, and he determined to devote certain feu-duties or other annual payments for repairing and upholding it.

He therefore executed, on 1st February, 1605, a Charter of Mortification, which proceeded on the narrative that he was moved by zeal for the honor of Almighty God, and that the polity of this part of the kingdom might be maintained, and because the records testify that a stone bridge over the river Don, near the Burgh of Aberdeen, had been built by command, and at the expense, of a most potent Prince, Robert Bruce, King of Scotland, of blessed memory, which, partly by the injury of time, and because no sufficient annual revenues existed for its maintenance, seemed about to fall into ruin, and that it much concerned the whole northern part of the said kingdom, especially the citizens of the said burgh, that this ancient monument should not go to ruin, or (literally) fall down.

The Clause of Conveyance is very important, as containing the express terms of the grant, and is, therefore, given at length, with a translation, in parallel columns—

<p>Noveritis me itaque donasse, concessisse, alienasse, et hac præsentī carta mea confirmasse, tenoreque præsentium donare, concedere, alienare, et hac præsentī carta mea confirmare, Preposito, Bal- livis, Consulibus, et Communi- tati dicti Burgi de Aberdene, et eorum successoribus, totas et integras firmas, feudifirmarias, et annuos redditus meos sub- scriptos, (here follows a descrip- tion of the property conveyed). Quæquidem Feudifirmæ, seu an- nui Redditus, cum superioritate prædict., quatenus per me lici-</p>	<p>Wit ye me therefore to have given, granted, alienated, and by this my present charter confirmed, and by the tenor of these pre- sents, give, grant, alienate, and by this my present charter con- firm to the Provost, Baillies, Council, and Community of the said Burgh of Aberdeen, and their successors, all and whole the duties, feu-duties, and annual rents belonging to me under- written, Which feu-duties or annual rents, with the said superiority are, so far as lawful for me, presently</p>
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tum est, de præsentī mortificātur, et ad manum mortuam conceduntur, ad reparationem et sustentationem dicti Pontis de Don, *pro tanto*; ita quod licitum erit dictis Preposito, Baillivis, Consulibus, et Civibus dicti Burgi, eorumque successoribus, aut eorum magistro operis dicti pontis pro tempore, dictas feudifirmas et annuos redditus prædict.croftarum, cum suis pertinen., annuatim et terminatim recipere, et easdem ad reparationem et sustentationem dicti pontis applicare, et ad nullos alios usus, prout Deo, in extremo iudicio, respondere voluerint : &c.

The Feu-duties thus conveyed by Sir Alexander Hay amounted to £27 8s. 8d. Scots, or £2 5s. 8½d. sterling; and were, in the then existing state of matters, only a small contribution towards the restoration of the Bridge. This is precisely what he seems, from the language employed (*pro tanto*), to have anticipated, and it was still necessary for the Town to use every endeavour to raise money without delay, for the purpose of repairing and partially rebuilding the Bridge.

Accordingly, it is ascertained from the City Records that, on 1st May, 1605 (three months after the date of Sir Alexander Hay's Charter), the new and old Councils "Considering that the brig of Done is . . . become *very ruynous* . . . findis it meit that the Counsall and "Towne have a speciall care of the same, as they that hes "chefest intrest and quha will ressaue grytest hurt and pre-

“ iudice gif the same fall and decay (as God forbid). Lykas
 “ for this effect the Counsall hes causit craftismen visite and
 “ sicht the said brig be quhais estimatioun the same will tak
 “ the soume of fyve thousand merkis [£3,333 6s. 8d. Scots,
 “ or £277 15s. 6d. sterling] for beiting and repairing thair of.
 “ Heirfoir seing the forsaid brig is a commoun wark con-
 “ cerning the haill Countrie, finds it expedient that the
 “ Nobillmen and Baronis of this Sherifdome be travellit with
 “ be the ministers of everie presbiterie for granting a
 “ voluntarie contributioun for repairing and beiting of the
 “ same quhilk they ordane to be done in all convenient dili-
 “ gence in respect of the necessitie of the wark, and that the
 “ same standis in sa gryt danger and thinkis it
 “ expedient that the soume of *fyve hundreth pundis* be given
 “ be this burght for helping to beit and repair the said wark
 “ and that the same be uplifted be ane taxatioun gif the
 “ town will consent thairunto.”

The tax was at once agreed to and Taxers were appointed to apportion it.

About two months afterwards (on 28th June) a Head
 Court of the inhabitants was again called, “ be ye handbell
 “ passing through ye haill rewis of ye towne,” and it was
 resolved “ yat the sum of *aucht hundreth markis* usual
 “ money of ye realme of voluntar contribution given by
 “ thame to the help and support of the Town of Geneva, sal
 “ be bestowit, wairit, and employit upoun the help and support
 “ of the reparing of ye Brig of Done, *quilk is become ruynous*
 “ *and liklie to fall*, and specially to by lyme, stane, and otheris
 “ materialis to ye said Brig, as ane wark maist necessar.”

The efforts of the Clergy to “ travail ” with the Noblemen
 and Barons were unavailing. The only extraneous contri-
 butions received were raised chiefly by means of Church col-

lections, which were entrusted to the Bishop of Aberdeen, who appears to have interested himself in the matter. A statement of these follows :—

*“ Collectionoun ressaued be PETER Bischope off Aberdene for
“ helping to repair the Brig of Done.”*

	Scots.
From the Presbytery of Deer,	£175 0 0
„ Mr. James Ross, Minister [of Aberdeen],	66 13 4
„ Mr. Archibald Blackbourne [also Minister of Aberdeen],	66 13 4
„ The Principal of King’s College and fra Beroald Innes [a citizen of Old Aberdeen]	96 13 4
„ Mr. John Reid, Minister at Logye [Buchan], for himself and the Laird of Raneistoun,	16 0 0
“ Summa,”	<u>£421 0 0</u>

Mr. James Ross and Mr. Archibald Blackburn were Clergymen in the City, so that it is probable the Collections made in their respective churches were sent in their names.

There is no mention whatever in the City records or accounts of other contributions than those above mentioned (£421 Scots, or £35 1s. 8d. stg.) in supplement of the 800 merks (£44 8s. 10d. stg.) provided by the Town.

From the foregoing narrative it seems clear that the repairs so urgently required for the Bridge in the year 1605 were executed, in great part, at the expense of the town of Aberdeen, and of this the contracts and accounts for the work, which recent investigations have discovered, afford abundant confirmation.

On 6th July, 1607, a contract was entered into between “ Peter, Bishop of Aberdeen, Maister David Raitt, Principall
“ of the Kingis College of Aberdeen, and Alexander Cullen,

“ Provost of the Burght of Aberdene, on the ane pairt, and
 “ Andro Jamesoun and William Massie, Measonis Burgessis
 “ of the said Burgh, on the other pairt.” By that contract
 the Masons bound themselves to take down the *North-East*
side of the Bridge and to build the same sufficiently as therein
 detailed, the Bishop, Principal, and Provost finding all the
 materials and tools, and binding themselves to pay the Masons
 for their labour.

Annexed to the contract is a receipt dated 12th October,
 1607, by the Masons to “ David Cargill, Deane of Gild of
 “ the Burgh of Aberdene in name of the Provost, Baillies,
 “ Counsall, and Communitie thairof,” and Discharge “ to the
 “ said Toune of Aberdene, and als the said Bischop, Principal,
 “ and Provost of the said soume.” £16 Scots for extra work
 is also acknowledged.

A detailed account of the expenditure has been preserved,
 and is titled—

*“ The Compt. of the charges maid in the repairing of the
 “ Brig of Done, quhilk was begun to be reparit the 2nd
 “ of August, 1607, maid be David Cargill, Collectour
 “ and Paymaister.”*

The following is an abstract of these charges :—

To the Masons for work,	.	.	.	.	.	£176	0	0
For lime, stones, and carriage, barrows, tubs, a line, a spade, a shovel, scaffolding, deals, nails, ale to the Masons, and postages of letters to the Earl of Errol, and to the barons next his country to get them to convene for the support “ of “ the Brig wark,”	.	.	.	.	.	177	7	6
To the Master of Work,	.	.	.	.	.	10	0	0
Total,	.	.	.	.	.	£363	7	6

A "second Contract anent the repairing of the Brig of Done," dated 2nd May, 1609, was entered into between the said Bishop, Principal, and Provost of Aberdeen, on the one part, and the same masons, on the other part, for building and repairing "the *south-eist syd* of the Brig of Done;" the iron bolts, and lead, and frie work, "and all otheris stanis" required, being "furnesit be the said Bischope on the common purss."

For the masons' work under this contract, "the said Peter, "Bischope of Aberdeen, as hawear in his handis of the com-
"moun contribution and collectioun grantit for reparatioun
"of the said wark," undertakes to pay the sum of 530
merks Scots; the work "to be done and wrocht be the sicht
"of David Andersoun (Master of Kirk and Brig work), David
"Cargill (holder of the Town's contributions), and Andrew
"Watsoun" (Master of Work).

On the back of the deed of contract are two receipts by the masons to the Bishop. The first dated 10th July, 1609, embraces £235 11s. Scots, being two-thirds of the sum payable, and the second for £117 15s. 8d. Scots, the balance due, is dated 24th August, 1609. It further appears from an account of the Bishop's disbursements, that he paid for cartage, sand, lime, &c., iron bolts, lead, and causewaying, £112 11s., in all £465 17s. 8d. Scots. This account was audited and docqueted, as follows :—

ALEX. RUTHERFURD, Provost.

ALEX. CULLEN (last Provost).

ALEXANDER CULLEN, Baillie.

WM. LOWSONE, Baillie.

DAVID RUTHERFURD, Baillie.

GEORGE NICOLSONE, Baillie.

A third contract, of which two drafts are preserved, was entered into in 1611, by "Peter, Bischope of Aberdeine, "with the advyse of Maister James Ross, Minister of Godis

word ; David Andersone, Elder, Maister of the Kirk wark of "the said Burghe, and David Cargill, last Deane of Gilde "thairof, on the ane pairt," and the said Andro Jamesoun and William Massie, Masons on the other part. The latter undertook "to big and repair the brig of Done at the "*waist part* "thereof, beginnand at the new wark alreddie biggit be the "maissonnis foirsaidis," as also to build "*the haill butressis on* "*ilk syd of the said brig*," in manner specified "be the sicht of "the saidis Maister James Ross, David Andersone, and David "Cargill, upon the expensis of the commoun purs."

It is noted on the back of this document, of date, 18th August, 1611, that "the Bischop Principall of the Auld "College, Johne Collisoun, Paul Menzgeis, William Gray, "Baillies Robert Johnstoun, and David Cargill," visited and corrected part of this work, and gave directions as to building part of the *north-east side* of the Bridge, which thus appears to have been but partially repaired under a preceding contract.

The other draft of this contract is dated 26th July, 1611, and bears that the masons were to be paid £300 Scots, and that all materials were to be provided for them.

No other contracts or accounts in reference to these extensive repairs are known to exist, but it is probable that the work had not been completed, as an entry appears in the Dean of Guild's accounts for 1613-14, shewing that a letter was sent to the Earl of Errol concerning his contribution for repairing the brig of Don, referred to in 1607, but nowhere mentioned as received.

It thus appears that between 1607 and 1611 the bridge was repaired, and to a great extent rebuilt on the *north-east* and *south-east* sides, and on the *west part thereof*, and that the *buttresses* were rebuilt. This was accomplished by means of

funds provided by the Town of Aberdeen and collections in the city churches, also by subscriptions raised through the exertions of the Council in the Presbytery of Deer, and from the Principal of King's College and a citizen of Old Aberdeen. One county gentleman, the laird of Raneiston, a solitary exception to the caution of his brethren, contributed jointly with the minister of Logie-Buchan the munificent sum of £16 Scots (£1 6s. 8d. stg.) The work was executed at sight of the Provost and Council, the Bishop of Aberdeen, and the Principal of the College, and was undoubtedly so fundamental and thorough in its nature that the bridge was in future years kept in complete preservation by timely repairs, which Sir Alexander Hay's fund, now thoroughly started in its career of accumulation, could well afford.

The accounts of the Town and Guildry and of the Kirk and Bridge funds from 1605 to 1646 are in an imperfect state, and do not afford much information as to the expenditure from these sources on the Bridge of Don or similar objects. The following sums are entered as expended on the Bridge :—

1606-7, Guildry,	£2 18 8
1608-9, Kirk and Bridge Work,	3 0 0
1610-11, Do.	1 6 8
„ Guildry,	2 18 0
1612-13, Treasury,	4 0 0
1613-14, Guildry,	1 4 0
1645-46, Treasury,	4 0 0

The resources of the city seem to have been too limited to admit of any stated or considerable outlay even in work of such importance, and hence the separate assessments and contributions of the citizens, proceeding so far as the sale of the silver and brass work and ornaments of the churches. The interposition of Sir Alexander Hay, and the fortunate

“haining” of his fund, when a more selfish and less far-seeing policy might have caused its premature extinction, happily relieved the Council and community of farther exertions and sacrifices.

The Charter of Mortification, as before mentioned, was executed on 1st February, 1605, and the expense of it, and of its subsequent ratification by Parliament, was borne by the Council. The revenue of the first half-year became due at Whitsunday, 1605, and was drawn by David Anderson, Master of Kirk and Bridge work, who was appointed Collector of the Feu-duties by the Town Council. He seems to have drawn them for five and a half years, without rendering an account of his intromissions. It was not until Michaelmas, 1610, that he presented a statement, shewing that he had in hand £150 17s. 8d. This sum he was instructed to pay to David Cargill, Dean of Guild, to be by him invested, with other monies, in redeeming the lands of “Capraston.” The feu-duties of the next three years to Whitsunday, 1613, were duly accounted for, and with a grassum of £28, handed over to the Dean of Guild. These several sums amounted to £261 3s. 8d.

The only item of expenditure in those years, (1605 to 1613), which witnessed the restoration of the Bridge, is £2, deducted, on 8th October, 1613, from the feu-duties then paid over to the Dean of Guild, which “fourtie schillinges wis given out be the said David, for mending of the Calsie at the Brig of Done.”

On 26th June, 1616, the Dean of Guild was appointed “to caus calsey the Brig of Done, sufficientlie and substantiallie, and for that effect,” was appointed “Collectour of the annuellis mortifeit be umquhill Sir Alexander Hay,” for 1615-16. It is not recorded that he did so, nor is an entry

to be found in the accounts of any such outlay. In 1617-18 the Trust was restored to the care of the Master of Kirk and Bridge works.

In the year 1619, a payment of £95 9s. 4d. was made for work at the Bridge. This is the first indication in the course of fifteen years, that any part of Sir Alexander Hay's bequest was applied to rebuilding or repairing the Bridge of Don, and the only instance of such application from 1605 to 1634, at the least. In 1632, a sum amounting to £86 13s. 4d., was expended "in cutting off the craig upon the north side of "the Bridge," and in 1634, £1 0s. 6d. was spent, for what precise object does not appear. After this date, a more accurate system of accounting was adopted, and full information as to receipts and expenditure is attainable. The accounts were then unravelled, and the exact amount belonging to the Bridge fund was ascertained, and credited, and a fair start was obtained. This happened under the following circumstances.

An Act of Council, dated 16th September, 1635, was passed, declaring that the Master of Kirk and Bridge Work had "confoundit" and mixed up together the accounts of the monies belonging to the Brigs of Dee and Don with the accounts of the Kirk charge, and ordained that in future all these accounts should be kept separately, and as to the monies belonging to the Brig of Don, they found "that by and "attour the charges debursit yearelie in reparatioun and "upholding of the said Brig of Done thair will be frie to the "foir of the moneyis belonging thairto, the soume of" £360 6s. 8d. Scots, payable at Martinmas, 1635, by Mr. Robert Gordoune of Straloche, together with the sum of £77 9s. 6d., resting due by the Master on his intromissions, extending in all to the sum of £437 16s. 2d. (£36 9s. stg.),

“ whilk soume they ordaine to be lyikwayis employit on annuall
“ rent for the use of the fabrik of the said Brig of Done.”

This injunction was faithfully carried out. The fund was managed by the Town Council with care and prudence, and was drawn upon, to a limited extent only, for the repair of the Bridge and its approaches. It gradually accumulated until, in the year 1710, it amounted to £713 stg., a considerable sum when compared with £36 9s. in 1635. In the former year, one-half of the Barony of Easter Skene was purchased as an investment for funds in charge of the Council, and one-fourth of the price, amounting to £790 5s. 9d., was contributed from Sir Alexander Hay's Mortification, assisted by a small temporary loan. In 1712, the whole Barony was acquired by the Council, and was held in the proportions undernoted, for behoof of the several Trusts :—

The Guild Wine Fund, -	-	-	-	one-fourth.
The Bridge of Don Fund, -	-	-	-	one-eighth.
The Bridge of Dee Fund, -	-	-	-	one-eighth.
The Kirk Session of Aberdeen, -	-	-	-	one-sixth.
The Guild Box, -	-	-	-	one-sixth.
The Guild Brethren's Hospital, -	-	-	-	one-sixth.

The Share belonging to the Bridge of Dee fund, was purchased on behalf of the Bridge of Don fund, in 1757, for £2,150 10s., which shewed a large rise in value, within forty-seven years. Afterwards in 1788, a portion of the Estate was conveyed to the Kirk Session, in full of their *pro indiviso* share, and an adjustment of the several remaining interests was made by the Council in 1790. These were declared to be as follows :—

Guild Wine Fund, -	-	-	-	three-tenths.
Bridge of Don Fund, -	-	-	-	three-tenths.
Guild Box, -	-	-	-	two-tenths.
Guild Brethren's Hospital, -	-	-	-	two-tenths.

The lands of Skene proved a very fortunate purchase, and are still in part possessed by the Council. The proportion of net revenue, derived by the Bridge of Don fund, from that source, for crop 1874, is £453 9s. 11d. The income of the fund was at all times, after the restoration of the Bridge in the beginning of the 17th century, much in excess of any possible requirements for ordinary maintenance. The Bridge was kept in perfect repair, and was annually inspected, in the conscientious exercise of duty, by its guardians the Magistrates and Town Council, as the Tavern Bills appertaining to the visits amply testify. When no more important operation was needful, the Bridge was carefully "dighted," every season, at a cost of from 3s. 8d. to 10s. stg.

After providing for the maintenance of the Bridge, and for other large payments, which will be afterwards noticed, the annual savings were considerable, and rapidly accumulated, till in 1824, they amounted to upwards of £20,000. It was then represented to the Council, by the County gentlemen, that a new Bridge might, with great public advantage, be erected, about half-a-mile from the old Bridge, on a new line of road, to avoid the inconvenient and precipitous accesses to the latter, and afford a more direct and easy approach to Aberdeen, from the north-east of Scotland. Acting on this suggestion, the propriety of which they recognised, the Magistrates and Council applied for an Act of Parliament to enable them to acquire the necessary ground, and to establish a pontage, if such should be necessary. A Bill was introduced, which received the Royal Assent, on 20th May, 1825, whereby the Council was authorised to expend from the accumulations which had arisen upon the fund, such a sum of money, not exceeding £14,000 stg., as might be necessary for constructing and erecting the Bridge,

and putting in proper and complete repair, such parts of the road leading from Castle Street, towards the intended Bridge, as might stand in need of such repair, so as to render the communication between the Bridge and the market place of the city more commodious and convenient.

A handsome Bridge of granite was erected, under the authority of the Act, and completed in 1830. The expense so incurred, and in improving the access to Aberdeen, amounted to nearly £17,000, which sum, though largely in excess of that authorised by Parliament, was expended, without objection from any quarter.

The Council did not take advantage of the power given them to exact toll, but opened the Bridge to the public without charge. The old and new Bridges are in a state of perfect repair, and together, afford access to Aberdeen from the north as convenient and complete as it is possible to provide.

After the expenditure on the new Bridge had been met, it is estimated that the fund amounted to £7439 18s. 3d. In six years it had increased to about £8108 7s. 9d. The old Bridge was then in a state of complete stability and repair, and had received constant attention. So large a sum was, therefore, unnecessary in any circumstances for its maintenance.

The want of suitable public Schools was, at that time, much felt in Aberdeen, and seriously occupied public attention. They were inconveniently situated, and quite inadequate in extent and accommodation for the increased population. The following resolutions were, therefore, passed by the Magistrates and Council on 27th July, 1835 :—

- I. That an equitable arrangement be entered into with the Governors of Robert Gordon's Hospital, so as to place

the whole extent of the front of their property along Schoolhill, to the west of the gate, and behind the Grammar School, to a moderate depth, at the disposal of the Council, in order to obtain sufficient accomodation for the Schools, and, at same time, open up a proper view of the Hospital.

- II. That application be made to Parliament for authority to apply a sum, not exceeding £6000 sterling, of the accumulation of the Bridge of Don Fund, towards building the New Schools, and in the purchase of such properties, near the present Grammar School, as may be required to carry the plan of the proposed New Building into execution ; the original ground rent of £2 5s. 8d., and whatever balance of the Fund may remain, after the foresaid appropriation, being continued for the original purpose of the Endowment, and to accumulate as before, and in the event of the new accumulation being, from any unforeseen circumstances insufficient for the repair of the Old Bridge, that the deficiency be rendered a burden upon the Treasury of Aberdeen, in order that the intentions of the Mortifier may not be disappointed.
- III. That from the peculiar situation in which the Council stand, with regard to Gordon's Hospital, constituting nineteen out of the twenty-three Governors of that Institution, and also from their being Trustees of Sir Alexander Hay's Mortification for the support of the Old Bridge of Don, the foregoing proposal should be submitted to a public Meeting of the Inhabitants, for their approval and sanction.

These resolutions were confirmed at a General Meeting of the Inhabitants of the City, held on 10th August, 1835, when it was resolved :—

- “ That this Meeting approve of the Resolutions of the Magistrates and Council, both with respect to the proposed
 “ site for the Town's Public Schools, and the appropri-
 “ ation of part (not exceeding £6000), of the accumula-

“tion of the Bridge of Don Fund, towards the erection
 “of said Schools ; and, being deeply impressed with the
 “necessity of the undertaking being proceeded with, as
 “early as circumstances will admit, they recommend to
 “the Magistrates and Council to take the proper steps
 “for procuring the authority of Parliament, in the
 “course of the ensuing session.”

It was argued that, from the tenor of the charter executed by Sir Alexander Hay, the interest and conveniency of the citizens of Aberdeen seemed to form a special element with the donor in granting the Feu-duties or Annuities, and that no public purpose existed connected with the interest and conveniency of the citizens for which a portion of the accumulated savings of the fund could be more properly or beneficially employed than in the erection of commodious public Schools.

To this proposal opposition was not expected, least of all from the county gentlemen, for whose benefit and at whose request a sum of nearly three times the amount had been devoted to building a new Bridge over the River Don and improving the access to Aberdeen. Still these gentlemen strenuously opposed it, though they indicated their willingness to sanction the application of a further part of the accumulations in building another Bridge over the River Don in a different part of the county. They maintained that to do so “much concerned the whole of the northern part of the “Realm of Scotland,” ignoring the clause, “especially the “citizens of the Burgh of Aberdeen.”

It seems, in the view now entertained of the right to oppose a Bill in Parliament, that these parties had no *locus standi*. The Bridge, which was the object of Sir Alexander Hay’s solicitude and benefaction, was in perfect order, and no case of breach or even neglect of trust, on the part of the

Council, could be alleged or suggested. On the contrary, they had built a second Bridge, and greatly improved the accesses to both. The right to oppose was not called in question by the Council, but it is probable that in the present day such opposition would not be listened to, and it certainly would not be acquiesced in. It was, however, successful at the time. The second reading of the Bill was carried by a large majority of the House of Commons, but it was thrown out in Committee, for reasons, and under influences, not wholly dependent on its merits. It was recommitted by a second large majority of the House, but the preamble was again found not proved in Committee by a majority of 28 to 21, and the Bill was abandoned.

It is difficult to see on what pretext the interference of gentlemen resident in the County could, in any view, be justified. In the time of greatest need they refused all assistance. So far as they were concerned, the Bridge might have become a ruin in 1605. It was only preserved by the exertions of the Council and the liberality of the citizens, through whose instrumentality also the roads to the northward of Aberdeen were improved, and a second Bridge was built, completing in a perfect manner the whole objects which Sir Alexander Hay had in view. If it had rested with the County gentlemen, there would have been no Bridge, and without the exertions and self-denial of the Council and community there would have been no Bridge of Don Fund, excepting the original feu-duty of £2 5s. 8¹/₂d. sterling.

Since 1836 the fund has rapidly accumulated, and now amounts, in addition to the Feu-duties, to £25,719 3s. 7d., inclusive of a debt of £1200 due by the Bridge of Dee fund. The gross revenue of the year ending 30th September last was £909 17s. 7d.

It is now necessary to explain how the Town Council dealt with the savings or accumulations of the fund under their management, as indicating the mode in which they interpreted the Contract, constituted between them and Sir Alexander Hay, by acceptance on the part of their predecessors of the Trust created by him.

It has been shewn how carefully and effectually the fund was at first saved by the exertions of the Council, and the liberality of the citizens. For 115 years after 1635 the expenditure on the Bridge was very moderate, and the increase of savings continuous. In 1750, the capital of the fund, exclusive of a share in the lands of Skene, which yielded about £43 annually, was under £2000, whilst the total income from all sources was about £135. The future maintenance of the Bridge, was amply secured, and the object of the Donor was safe beyond the risk of accident. The Council were, therefore, justified, from that point of view, in treating the accumulations according to the meaning and interpretation they placed on their legal rights.

The accounts of the Mortification have been carefully examined from 1635, when they were placed on a footing distinct from the Corporation Accounts, and excerpts have been made of all entries, shewing the application of savings to purposes other than the preservation of the structure of the Bridge. A list of these is given in the Appendix.

Since the year 1750, large sums have been applied in making roads, and in erecting and repairing Bridges, in and about the City, and throughout the country. Many useful purposes, though quite foreign to the first object of the benefaction, were thus accomplished, whilst civic liberality was manifested to Mr. Secretary Dundas, by the presentation of the freedom of the city in a gold box. In 1818, a royal warrant

for electing Magistrates and Council was obtained at the cost of £300, and in 1850 and 1851, £1838 11s. 6d. were expended in levelling and macadamising, and in part causewaying the road from Aberdeen to the New Bridge of Don. The expenditure so incurred was provided for from the fund, and many sums of large amount were transferred from it in last century, towards the reduction of debt on the Kirk Work charge of the city.

It is evident that the Members of Council of the day regarded and treated the accumulations of the fund as at their absolute disposal, for the purposes of the Community, whether these purposes were *cy près* of the Trust or not. That the expenditure for these purposes did not begin earlier than 1750 is easily accounted for. The fund only then assumed such proportions, as safely to permit interference with its revenues. The usage thereafter, which was uniform and uninterrupted, must have an important influence on the construction of the contract and the understanding of parties.

The expenditure of £14,000, in erecting a new Bridge, was a very serious matter, and quite different from anything before thought of. A Bridge could not be erected without acquiring lands, whilst power to establish a pontage was found necessary. It was, therefore, not merely prudent, but absolutely necessary to apply for an Act of Parliament.

The position of the Council, in reference to the surplus funds, was well illustrated by the application of £3000, beyond the sum authorised by Parliament, in the completion of the Bridge and approaches to Aberdeen. It was fully recognised by the County gentlemen and the public, who offered no objection to a proceeding which could only be justified by the possession of powers incompatible with the position of Trustees acting in the usual capacity.

The further application of money, proposed six years afterwards, was also on a large scale. A sum of £6000 was sought to be employed in building schools in Aberdeen, involving the acquisition of land and the obtaining authority to pledge the revenues of the city for the restoration of the Bridge in the event of serious accident. In this case also an Act was necessary, for purposes distinct from the mere outlay of the money.

Some years after the Bill promoted for this purpose was thrown out, a case was decided in the House of Lords, having an important bearing on the relations of the Town Council, as representing the community, to the accumulated funds, not required for the maintenance of the Bridge of Don.

In 1842, a summons of Reduction, and Declarator, was raised in the Court of Session, at the instance of *Sir Thomas Burnett of Leys*, against *the Principal and Professors of King's College, Aberdeen*.

This Summons concluded for reduction of a contract, dated in October, 1648, between Sir Thomas Burnett of Leys, Bart., and the Principal and other members of King's College, Aberdeen. It appears that Sir Thomas Burnett had been educated at King's College, and that he was the owner of certain crofts of land in the neighbourhood of Aberdeen, which he held under the College as superiors, and for which he was bound to pay a feu-duty of £20 Scots yearly. He was desirous of having three Bursars to be presented by him and his family, educated, in all time coming, at King's College, on the same footing as the other bursars of philosophy on the foundation of the College, and with the view of attaining this object, he proposed to dispoise and to resign into the hands of the College, as superiors, *ad perpetuam remanentiam*, the pieces of land above men-

tioned. As the rents or produce of these lands did not then yield as much of yearly revenue, as would pay three bursaries equal to those enjoyed by the other bursars, Sir Thomas could not carry his plan into effect, without stipulating with the College, that, besides contributing the feu-duty payable to themselves, they should take the risk of what the crofts would yield, and would make his three bursars equal, in the amount paid to them, to the foundation bursars in the College. To these terms the College agreed, taking the risk of the crofts rising or falling in value, and of thus being called upon to pay a larger or smaller sum as the event might happen.

It appeared that, at the date of the Contract, and down to the year 1717, the average yearly produce of the four crofts, disposed by Sir Thomas to the College, amounted to $19\frac{1}{2}$ bolls of bear, which yielded about £85 1s. Scots. After deducting the expense of collecting, and losses by tenants, there was a great deficiency in the sum necessary to maintain the three bursars presented by Sir Thomas and his successors, on the same footing with the other bursars. The College had, therefore, to pay to each of the former £40 yearly to keep them on a footing with the others, and this greatly exceeded the whole rents and produce of the lands disposed to them. After deducting the feu-duty of £20, the whole rents received did not, at an average, exceed £60, whilst the College paid to the Leys bursars the sum of £120 Scots yearly. They trusted that, by improving the lands, or from other causes, the value might so increase as, in some measure, to indemnify themselves for the loss which they in the meantime, sustained.

After a time, the foundation bursaries were raised to £60 Scots, and the allowance to each of Sir Thomas's bursars was also raised to the same amount.

In course of years the land which had hitherto been so unproductive, being in the vicinity of Aberdeen, was feued so as to yield about £300 sterling a-year. Of this sum £15 was paid annually to the Bursars, and the remainder was thrown into the general funds of the College.

The position assumed by the College was, shortly, this. At the period when the lands mortified were insufficient to carry into effect the views of the founder, they agreed to take these lands, under the burden of making provision, in a definite manner for the education and maintenance of three Bursars. This undertaking they fulfilled, whilst by doing so they suffered loss, and when the revenue derived from the lands yielded a large surplus, they claimed right to dispose of that surplus as part of the proper revenues of the College.

Sir Thomas Burnett called on the College, to apply the whole of the improved rents of the Leys crofts to the Leys Bursars, and on their refusal to do so, he raised a summons of Reduction of the contract of 1648, containing this amended conclusion, "that the said defenders hold the said lands, and
" are bound to administer and apply the whole revenues
" of the same, for the behoof of three Bursars, to be presented from time to time by the pursuer and his successors, in terms of the said Deed of Mortification, and for
" the entertainment and maintenance of the said Bursars of
" King's College aforesaid."

The Court of Session decided in favor of the Pursuer, and, on 23rd February, 1844, pronounced the following Interlocutor—"Find and declare in terms of the amended declaration conclusion of the Summons that the Defenders (the College) hold the lands referred to in the Summons and are
" bound to administer and apply the whole revenues of the
" same for the behoof of the three Bursars, to be presented

“ from time to time by the Pursuer and his successors, in
 “ terms of the Deed of Mortification, and for the entertain-
 “ ment and maintenance of the said Bursars of King’s Col-
 “ lege ; and in so far repel the Defences and decern.”

The majority of the Judges of the First Division joined in this finding—the Lord President (Boyle) dissenting. Lord Fullerton, in whose opinion Lord Jeffrey concurred, remarked, “ I cannot read the Deed without being satisfied that
 “ it does not convey, and was not intended to convey, any
 “ beneficial right to the College. In so far as the College is
 “ concerned, it is a conveyance to them solely in trust for the
 “ benefit of the Bursars. There is not a word in it, from be-
 “ ginning to end, which can be considered as conferring any
 “ patrimonial interest on the College. No doubt, the granter
 “ refers to the ‘ manner, measure, and quality,’ according to
 “ which the previously existing Bursars were maintained.
 “ But that is not referred to as a condition, it is only by way
 “ of narrative or description. The purpose of the grant is
 “ declared to be the endowment of three Bursars, to be edu-
 “ cated and maintained like the other bursars of philosophy.
 “ The endowment may have been too liberal, or it may have
 “ been too scanty, to afford that maintenance, but still the
 “ whole is appropriated to the Bursars, to no one else. . .
 “ . . . Whatever is given, I mean given beneficially, is
 “ given to the Bursars while the conveyance to the College is
 “ one purely and exclusively in trust, and conferring no patri-
 “ monial or pecuniary right whatever.”

Lord Mackenzie, one of the majority of the Court who took a view adverse to the College, made an observation not inapplicable to the Bridge of Don case, in so far as concerns advances for rebuilding the Bridge made by the Donees when the fund was inadequate. He remarked—

“ There is another view, I think, totally distinct, and that is that
 “ the grant was for the Bursars, but that it was a grant which
 “ was to be under the management of the College, and that
 “ all Colleges might, in the course of fair management, anti-
 “ cipate this fund, so as to provide for the existing Bursars,
 “ by imposing some burden on it in the anticipation that it
 “ was to increase. Now, I do not altogether reject that view,
 “ if I had a proper case for it. I do not say, if the College,
 “ as managers, had put in their minutes, that—Whereas, we
 “ find that the rents at present are not adequate to afford any
 “ reasonable allowance to these Bursars ; but, whereas, we see
 “ that feuing has commenced in that neighbourhood, and that
 “ the rents are likely to rise to a large sum annually ; there-
 “ fore, we advance or borrow a sum of money towards the
 “ maintenance of the existing Bursars, reserving to ourselves
 “ to pay it off when the rents shall have risen. I do not
 “ know whether, if that had been done, that they would not
 “ have been entitled to restitution out of the increased pro-
 “ duce. I would not say that there might not be an equali-
 “ zation fund, because the rents may not be paid in a parti-
 “ cular year. But that view is not supported by any aver-
 “ ments : it is, indeed, not the plea of the College.”

The decision of the Court of Session was appealed against,
 and the House of Lords, on 28th August, 1846, reversed the
 interlocutor complained of, and assoilized the appellants (the
 College) from the conclusions of the summons, with costs in
 the court below.

An example of the arguments on both sides, at the bar of
 the House of Lords, may be useful, as they might with almost
 equal propriety, be urged in the case of the Bridge of Don.
 For the College it was argued, “ The gift, therefore, is out and out
 “ to the College, under burden only of a fixed payment, a pay-

“ment as certain and capable of being ascertained, as if it
 “had been specified in money sterling. Upon the authority
 “of the cases which have been cited, therefore, the College is
 “not a Trustee merely of the lands to apply the rents, what-
 “ever their amount may grow to, on the objects of the charity,
 “but a Donee under burden of specified payments, with an
 “absolute right to the surplus.”

Sir Fitzroy Kelly, and Mr. Bethell (afterwards Lord Westbury), argued for Sir Thomas Burnett—“The deed in truth is a
 “gift upon trust, for the benefit of charity, and any surplus of
 “the revenue, over the benefits specifically given, must be
 “applied for the objects of the charity. Where the gift is of
 “what is insufficient, or no more than sufficient for the pur-
 “pose intended, any surplus afterwards arising goes to the
 “object of the charity. It is only where there is a surplus
 “at the time of the gift, that the Donee in trust takes the
 “benefit of it.”

Nothing could be more forcible than the reasoning of the very eminent Counsel for Sir Thomas, or more appropriate to a situation, adverse to that assumed by the Magistrates and Town Council. It had no effect, however, on the House of Lords, who decided that the surplus revenues belonged absolutely to the College.

The noble and learned Lord, who with the Lord Chancellor (Cottenham), took part in the judgment of the House, was Lord Campbell. He expressed his opinion shortly, but very decidedly, thus—“It being quite clear that you would violate
 “the intention of the Donor if you were to put these Bursars
 “on a better footing than the other Bursars of the College, I
 “think that the construction which would give the whole of
 “the increased rents and profits to these three Bursars could
 “not possibly be the right construction to be put upon this
 “instrument. Looking to the whole transaction, it seems to

“ me that it was a kind of bargain between the Donor and
 “ the College ; for better or for worse the College undertook
 “ that, if the rents and profits should fall off, still those three
 “ Bursars should remain on the footing of the other Bursars
 “ of the College ; if the rents and profits should increase, the
 “ College, the Donees, should enjoy the benefit of the increase.”

A *resumé* of this important case has been given, that it may appear how far the circumstances resemble those attending Sir Alexander Hay's fund. It was thought, at the time the judgment of the House of Lords was given, that the similarity was very close, and a case for opinion was consequently laid, in 1847, before Lord Advocate Rutherford (afterwards Lord Rutherford), and Mr. Inglis (now Lord President of the Court of Session). Their opinion will be found in the Appendix, and is to the effect generally, that, applying the principles sanctioned in the case of King's College, and other cases, Sir Alexander Hay's gift must be dealt with, as if it were made to the City of Aberdeen, subject to the obligation of maintaining the Bridge, and consequently that the surplus after satisfying that object to the fullest possible extent, must go to the Donees of the fund for their own use.

It was then resolved to consult English Counsel, and the same case was submitted to Mr. Bethell and Mr. James Anderson. The opinion given was unfavourable to the views of the Council, and indicated that the accumulated funds could not legally be interfered with, except under the authority of an Act of Parliament.

It appeared to the compiler of these notes, after careful study of the whole documents to which he had access, that the case submitted to Counsel was not so exhaustive of the facts as to enable them to form an opinion so decided as might be on the law applicable thereto. In particular, it seemed that the

state of the Bridge in 1605, after completion of the Deed of Mortification, was quite incompatible with its restoration at the expense of so limited a fund. Also, that no part of that fund had been applied to the Bridge for a number of years, after 1605, during which time the revenues were being accumulated. The probability was apparently very strong that somehow the Bridge had been re-built, and had been put into such a state of repair from extraneous sources, that the augmented fund became after a time more than adequate to afford the annual repairs required to prevent the Bridge from again becoming dilapidated.

A search was therefore made in the City Records and Accounts. The expectations formed were fully realised by the discovery of the important circumstances narrated in previous pages.

It farther appeared unlikely that the Town Council, whilst applying part of the surplus revenues of the Bridge of Don Fund to purposes unconnected with the Bridge, did so to an extent so limited as that disclosed in the list of payments forming an Appendix to the Memorial of 1847. A more careful examination of Accounts in the Charter-room of the Council, showed that the usage in this respect had been much more extended than had been supposed, and was practically continuous from 1750 until the present time. This is clearly important as showing that, rightly or wrongly, the Council, for a very long period, construed their right to the surplus funds as absolute and unconditional, and acted on that construction without challenge.

It is, therefore, obvious that the resemblance of the case of the Bridge of Don to that of the Leys Bursars is closer than earlier information indicated.

In both cases the rents or feu-duties were inadequate to effect the object the Donors had in view.

In both, the Donees accepted of the Trust, and fulfilled the intentions of the Donors, whilst the Mortified Funds were inadequate for that purpose.

The measure of expenditure was in both cases fixed and limited. It was so, in that of the Bursars, to their education and maintenance, "according to the manner, measure, and quality, and as the rest of the Bursars at present in the College." The Lord Chancellor stated that these instructions were as definite in regard to the Bursars as if specified sums had been directed to be applied for their use; and in referring to the Perth case which had been cited, he remarked, "it wants the important fact upon which this case principally turns, namely, the limit of the expenditure to be bestowed upon the first object of the gift."

In this very important particular, the Bridge of Don case fulfils the conditions of the other. The object of the gift was for repairing and upholding the Bridge (*"ad reparationem et sustentationem"*), proceeding on the narrative that it seemed about to fall into ruin. The first and great repair was executed through the instrumentality of the Council and citizens without drawing on the Fund—the charge on which has, consequently, been confined to the secondary duty of maintaining or upholding. The measure of this work possesses no element of expansion, as a charity, and is perfectly definite. It is indeed more so than educating and maintaining three Bursars in the same manner as certain other Bursars at the same College.

The motives which influenced the donors in both cases to confer their benefactions were not unlike.

The inductive clause of the deed in favour of King's College, is as follows:—"For sameikill as the said Sir Thomas Burnett of Leyis, taking to his serious consideratioun the

‘ great utilitie and proffeit quhilk may redound to the Kirk
 “ and commounwelth be the floorisching of schoolis, colledges,
 “ and seminaries of learning quherein the zouth may be so
 “ educat and trained that thereafter, be Godis guid providence,
 “ they may becum guid instrumentis in Kirk and commoun-
 “ welth, and considdering that it fallis out ofttymes that
 “ many guid spiritis, for laik of meanis to maintene thame-
 “ selffis at schooles and colledges, are forcit to leive off the
 “ cours of thair studies and to tak thameselffis to servile
 “ traidis and oyr baser imploymentis, and the said Sir
 “ Thomas, carieing ane great deale of respect and affectioun
 “ to the said Kingis Colledge of Auld Abdn., as to the
 “ place quher he had his educatioun, thairfore, the said Sir
 “ Thomas, for the glorie of God, the weill and utilitie of the
 “ churche and commounwelth, the advancement of learning in
 “ the northerne pairtis of this kingdome, the supplie and help
 “ of some poore ones that cannot be abill to maintene thame-
 “ selves at colledges, and *out of the special love, favour, and*
 “ *respect, that he carries to the said Kingis Colledge of Auld*
 “ *Abdn., &c.*

In resolving to bestow his gift, Sir Alexander Hay was moved by zeal for the honor of Almighty God, and that the polity of this part of the kingdom might be maintained, and because (the Bridge), partly by the injury of time, and because no sufficient annual revenues existed for its maintenance, seemed about to fall into ruin, and *it much concerned* the whole northern part of the kingdom, *especially the citizens of the said Burgh*, that this ancient monument should not go to ruin.

Sir Thomas Burnett was much interested in the well-being of the College, and Sir Alexander Hay in that of the citizens of Aberdeen. Hence it may be reasonably assumed that both

wished to benefit their respective Donees, in so far as consistent with the primary objects they had in view.

In adverting to the cases of the *Corporation of Bristol*; the *Cordwainer's Company*; *Smythies*; and the *Fishmonger's Company*, the Lord Chancellor remarked, "that, generally speaking, in searching for the intention of the Donor, it will be assumed to have been to confer a benefit upon the Donee, in the enjoyment of any increase of the fund" provided that (*inter alia*), "the gift be to the Donee, subject to certain payments to others," and "if the Donee might be a loser by the insufficiency of the fund."

He proceeded to say that, independently of these rules, "there are provisions and expressions strongly confirmatory of the intention in favour of the College." One of these was thus stated by his Lordship—"The Deed expresses the motives for the gift, which are—1st, The promotion of learning generally; 2nd, Giving instruction to those who could not afford to purchase it; and, 3rd, The Donor's respect and affection for the College."

The case of the *Attorney General v. Mayor of Bristol*, is a leading authority in the construction of Deeds of Trust, and formed the subject of an elaborate judgment by Lord Eldon in 1820. It may here, with advantage, be shortly referred to.

The Lord Chancellor remarked, in deciding the case, "The deed goes on to state, that the Mayor and Corporation of Bristol, within the space of four years, were to purchase lands, which, together with those purchased, were to amount to the clear yearly value of £120 and more, over and above all yearly charges and reprises, to be applied to the uses after-mentioned (I apprehend uses here merely mean the same as intents and purposes), and that the rents of both

“ are to be employed in manner therein specified ; and then
 “ follow these words, ‘and to no other uses, intents, or purposes.’
 “ But though these words are here inserted, the question upon
 “ the whole deed will be, what you are to do, or what was the
 “ intention of the author of this deed to do with rents and
 “ profits, not given to the uses after-mentioned ?
 “ the question is, whether it is not the fair construction of the
 “ deed to say, that, although you ought to be beat out of the
 “ construction which arises out of those plain words *to no other*
 “ *use*, yet, if you find, from the whole frame of the instrument,
 “ you cannot give that effect to them, which they might have
 “ in other cases, it becomes a question of intention, which you
 “ must collect from the whole deed ; and, if the intention is,
 “ that they should not have that large effect now contended
 “ for, is it not the true rule of construction to give them the
 “ effect which they ought to have, by considering all the parts
 “ of this deed taken together ? ”

He farther observed “recollecting that Bristol was a ma-
 “ terial and prominent object of the bounty of the author of
 “ this gift, is this not a case which falls within the range of
 “ those cases in which property given to a Corporate Body is
 “ given to it subject only to the charges imposed, and not as
 “ a mere Trustee, entitled to no other benefit than what is ex-
 “ pressly given to it in distribution, and entitled to all the in-
 “ demnities of Trustees, *ultra* those expressed and pointed out
 “ in the clause in which they are given ? Upon the best
 “ judgment I can form, and laying out of view everything but
 “ the question, whether this Deed appropriates the surplus
 “ rents to these charities, I am of opinion that they cannot,
 “ under the effect of this Instrument merely, call for a distri-
 “ bution of the surplus.”

In the course of the arguments addressed to him, his Lord-

ship (in the words of the report), expressed considerable doubt whether, after an enjoyment of more than two centuries under a practical construction of this Deed, the Court, pending an appeal from a contrary judicial construction, would change the possession, and remove persons who had so long enjoyed it, and, *particularly, where more than twenty bodies, seeing that construction acted upon, de anno in annum and interested in changing it, had never interfered.*

In his speech in the King's College appeal, Lord Cottenham thus referred to this case:—Lord Eldon, after reviewing former decisions from the earliest time, “held the Donees of the “Fund entitled to the surplus which was not otherwise disposed of, they having covenanted to apply the income in “certain specified payments to certain charities.”

The case of the Town Council in relation to the Bridge of Don fund has been stated in as much detail as will enable the Members, it is hoped, to form an opinion on its merits. It is believed that every material fact is now known, and that recent investigations have, in vital points, augmented and strengthened the data on which such eminent lawyers as Lord Rutherford and the Lord President (Inglis), when at the Bar, formed an opinion favourable to the right of the Council to appropriate the surplus fund to their own use on behalf of the community.

On the whole, the following propositions are submitted, with great deference, as sound in fact and in law.

1. Sir Alexander Hay intended to confer a benefit on the Town Council and Community of Aberdeen, by the donation of a fund in aid of their efforts to keep in repair the Bridge of Don, a duty with which they had charged themselves from

the earliest times. This fund, as the Donor knew, was inadequate for the repair and maintenance of the Bridge, and hence the expression "*pro tanto*" in the Deed of Conveyance.

2. The "*repair*" of the Bridge, which was the first object of his solicitude, was executed through the exertions and contributions of the Town Council and citizens of Aberdeen.

3. The fund was maintained intact and allowed to accumulate, whilst the Bridge was being "*repaired*," or, more properly, re-built, by means of extraneous contributions.

4. It was reserved as the means of carrying out the second object of Sir Alexander Hay's solicitude, viz., the "*maintenance*" of the Bridge—a task so easy, with regular and careful attention, that accumulations previously commenced rapidly and continuously increased.

5. The gift was accepted for better or for worse, and in fulfilment of "a kind of bargain between the Donor and the Council." The necessary work was mutually performed. The fund, which might have been extinguished in effecting *repair*, was thus saved to provide for *maintenance*.

6. The limit of the expenditure "to be bestowed upon the first object of the gift" is definite, and capable of easy ascertainment. It is not elastic, as in the case of a charity.

7. The savings from the income of the Fund constitute surplus not otherwise disposed of, and, as in the case of the *Corporation of Bristol*, fall to the Donees.

8. The Old Bridge and the accesses thereto are in perfect order, and a New Bridge, approached from Aberdeen by an excellent road, has been built at the expense of the Fund. The first object of the gift and the patriotic intentions of the Donor are thus completely fulfilled, and no one has interest to challenge the Town Council, acting for the citizens of Aberdeen, in disposing of the surplus which owes its existence to the forbearance and good management of their predecessors.

APPENDIX.

Mortification by Sir Alexander Hay, Lord Clerk Register of Scotland, of annual Feu-duties amounting to £27 8s. 8d. Scots, for the support of the Bridge of Don.

Dated 1st February, 1605.

Omnibus hanc Cartam visuris vel audituris Magister Alexander Hay, Clericus Senatus et Consilii S. D. N. regis, ac hereditarius Proprietarius omnium terrarum feudifirmarium et annuorum reddituum olim ad Capillanos seu vicarios chori ecclesiæ Cathedralis Aberdon. Spectan. eternam in domino salutem: Noveritis me, pro zelo motum in honorem Dei Omnipotentis, et ut sustineatur politia hujus regni in hac parte; Et quia annales testantur pontem lapideum, super aquam de Done, prope burgum de Aberdene, constructum fuisse ex mandato et impensis quondam invictissimi Principis Roberti Brucei, Scotiæ regni, optimæ memoriæ, regis; qui, partim injuria temporis, partim quod nulli annui proventus suppetant unde sustineatur, ad interitum perducere videtur; et quia plurimum interest toti boreali parti prefati regni, presertim civibus dicti burgi, ne antiquum illud monumentum corruat, et ex aliis causis, rationi consonis, animum meum ad hoc movere; Itaque donasse, concessisse, alienasse, et hac præsentī Carta mea confirmasse, tenoreque præsentium donare, concedere, alienare, et hac præsentī Carta mea confirmare, preposito, ballivis, consulibus, et communitati dicti burgi de Aberdene, et eorum successoribus, Totas et integras firmas, feudifirmarias, et annuos redditus meos subscriptos, annuatim levare, et percipere, ad terminos consuetos de terris etcroftis subscriptis. viz. :—annuam firmam feudifirmariam quatuordecim librarum, usualis monetæ regni Scotiæ, decroftis subscriptis debitam, olim Magistro Roberto Lumisden de Clovacht incumben. et nunc ad Alexandrum Cullen burgen. de Aberdene, hereditarie spectan. jacen. infra territorium croftarum burgi de Aberdene, viz. :—una crofta, vocat. adiepingill, jacen. inter croftam quondam Alexandri Gray ex australi, croftam quondam Joannis Cheyne ex boreali, communem viam regiam ex orientali, et lie cruiket myir ex occident. partibus; ac alia crofta terræ nuncupat lie lang rig, inter croftam quondam Andreæ Brabiner, postea Alexandri Mollison, et

nunc Alexandri Kemp, ex australi, Croftam olim fratribus predicatoribus incumben ex boreali, communem viam regiam ex orientali, et dictum lie cruiket myir ex occidentali partibus ; et alia crofta jacen. prope domum leprosum, inter croftam quondam Marion Umphray, nunc ad collegium regale de Aberdene spectan. ex anstrali, croftam quondam Joannis Wear ex boreali, communem viam regiam ex orientali, et lie calsey myir ex occiden. partibus ; ac alia crofta prope lie Spittell-hill, inter croftam dicti quondam Joannis Wear ex australi, lie Spittell-hill ex boreali, communem viam regiam ex orientali, et lie calsey myir ex occiden. partibus ; ac alia crofta, vocat fill ye cap, per quondam Magistrum Adamum Gordoun fundat jacen. prope lie theiffis briggis, inter croftam Davidis Mar ex australi et orientali partibus, croftam olim dictis fratribus prædicatoribus pertinen. ex boreali et communem viam regiam ex occiden. partibus Item aliam firmam feudifirmariam novem librarum monetæ predictæ de terris quondam mgri Alexre. Galloway Rectoris de Kinkell vocat crynis Wallis nunc Thomæ Quhyt naute Burgen. dicti Burgi incumben. jacen. in territorio de Futtie infra libertatem dicti burgi, inter terras Davidis Andersoun ex boreali, terras vocat thrie lang riggis ex australi, fluxum maris ex orientali, et terras quondam Joannis Mar ex occiden. partibus ; et de dictis terris, vocat. thrie lang riggis, jacen. ex australi parte die lie Auld Wallis inter terras dicti Davidis Andersoun et terras Andreæ Murray ex australi, terras vocat Sandilandis et terras Joannis Mar ex boreali, Terras communitatis de Aberdene, lie linkis appellatas ex orientali, et terras dicti Andreæ Murray ex occiden. partibus ; et de dictis terris, vocat. Sandilandis, jacen. inter dictas terras, vocat. thrie lang riggis, ex australi, terras Andreæ Murray ex boreali, terras lie links nuncupat. ex orien. et terras dicti Joannis Mar ex occiden. partibus ; et de terris, nuncupat. lie cuttingis de futties myir, jacen. inter terras dicti Alexandri Cullen ex australi, futties myir ex boreali, dictas terras vocat. lie linkis ex orientali, et terras quondam Vilhelmi Fuddes ex occiden. partibus ; ac de terris dicti quondam Magistri Alexandri jacen. inter viam publicam vocat. bouthget, ex boreali, aqueductum discenden. a lie futties myir ex australi, terras quondam domini de Barnis ex occiden. et futties myir ex orien. : ac de tribus pecciis terrarum, vocatis lie cuttinges, Jacen. inter aque-ductum predictum ex boreali, terras fratrum domus Sancte Trinitatis de Aberdene ex australi, terras dicti Vilhelmi Fuddes ex orien. et fluxum marinum ex occiden. partibus, nunc dicto Thomæ Quhyt naūtae in feudifirme pertinen. ; Item unum annuum redditum triginta trium solidorum et octo denariorum monetæ predictæ, de crofta terræ olim quondam Vilhelmo Kintor, burgen. dicti burgi, et nunc Joanni Donaldsone burgen. ejusdem pertinen. jacen. prope lie Gallowgait port dicti burgi, vocat calsay croft, alias lie lang riggis, inter croftam capellanorum collegii Aberdonen, ex australi, Croftam

quondam Vilhelmi Edie ex boreali, communem viam regiam ex orientali, et lye cruikit myir ad occiden. ; annum redditum viginti sex solidorum et octo denariorum de crofta terræ, nunc Joanni Leith de Montgarie pertinen. Jacen. prope lie Crabstane, ex parte occidentali territorii croftarum dicti burgi, inter croftam quondam Ricardi Kyntor ex orien. croftam quondam Alexandri Kyntor ex occiden. communem viam regiam ex australi, et croftam quondam Joannis Mar ex boreali, partibus ; Item annum redditum viginti octo solidorum, et octo denariorum monetæ predict. levand et percipien. de crofta terræ olim quondam Joannis Howye, burgen. dicti burgi, et nunc Joannis Tullidaff burgen. ibidem, spectan. Jacen. ex parte orientali territorii croftarum dicti burgi, inter croftam quondam Alexandri Gray ex australi, croftam quondam Roberti Scroggie ex boreali, communem viam regiam ex occidentali, et lie Gallowhills ex orien. partibus ; extenden. in toto ad summam viginti septem librarum octo solidorum et octo denariorum ; una cum superioritate mea dictarum terrarum et croftarum cum pertinen ; Quæquidem feudifirmæ, seu annui redditus, cum superioritate prædict., quatenus per me licitum est, de præsentī mortifican- tur, et ad manum mortuam conceduntur, ad reparationem et sustentationem dicti pontis de Don, pro tanto ; Ita quod licitum erit dictis preposito, ballivis, consulibus et civibus dicti burgi, eorumque successoribus, aut eorum magistro operis dicti pontis pro tempore, dictas feudifirmas, et annuos redditus, predict. croftarum, cum suis pertinen., annuatim et terminatim recipere, et easdem ad reparationem et sustentationem dicti pontis applicare, et ad nullos alios usus, prout Deo, in extremo iudicio, respondere voluerint : Tenen et habent omnes et singulas prædictas annuas feudifirmas et annuos redditus particulariter superius specificat extenden in toto ad dictam summam viginti septem librarum octo solidorum et octo Denariorum annuatim levand et percipiend ad terminos consuetos de dictis terris et croftis superius bondat et limitat cum superioritate predictarum terrarum et croftarum dictis Preposito Ballivis Consulibus et Communitati dicti Burgi et eorum successoribus a me meis hæredibus et Assignatis de S. D. N. Rege et suis successoribus in feodo et hereditate ac in libero Burgagio hereditarie in perpetuum cum omni jure et juris clameo titulo proprietate et possessione ac cum omnibus aliis et singulis libertatibus commoditatibus proficuis asiamentis et justis pertinen. quibuscunq ad prædict feudifirmas annuos redditus et superioritatem Croftarum prædict cum pertinen spectantibus seu juste spectare valentibus quomodolibet in futurum libere quiete plenarie integre honorifice bene et in pacem sine impedimento obstaculo revocatione aut contradictione aliquali Reddendo inde annuatim dicti Prepositus Ballivi Consules et Communitas dicti Burgi de Aberdeen eorumq successores prefato S. D. N. Regi et suis successoribus servitium Burgagium quantum spectat ad prædict terras feudifirmas et annuos redditus et alia servitia et divoria pro rata que Ego heredes

mei et Assignati pro loco habitationis feudifirmis et annuis redditibus olim ad dictos Capellanos spectan virtute mei Infeofamenti earundem facere tenemur tantum pro omni alio onere servitio seculare exactione questione seu demanda que de predict feudifirmis annuis redditibus et superioritate antedict aliqualiter exegi poterint vel requiri Et Ego vero dictus Magister Alexander Hay heredes mei et Assignati totas et integras predictas annuas feudifirmas et annuos redditus dict terrarum et Croftarum particulariter supra specificat et bondat cum superioritate earundem terrarum et Croftarum et suis pertinen prefatis Præposito Ballivis Consulibus et Communitati dicti burgi et eorum successoribus in omnibus et pro omnia fama pariter et effectum ut præmissum est, nec non liberas immunes et exoneratas ab omnibus oneribus et periculis a facto meo proprio, duntaxat hoc est quod neque fecimus nec faciemus quippiam in prejudicium hujus Infeofamenti contra omnes mortales warrantizabimus acquietabimus et in perpetuum defendemus omnibus dolo et fraude seclusis Insuper delectis meis Magistro Gulielmo Barclay Advocato et eorum cuilibet conjunctim et divisim Ballivis meis in hac parte specialiter et irrevocabiliter constitutis salutem vobis præcipio et firmiter mando quatenus Statum et Sasinam et possessionem hereditariam realem actuaalem et corporalem omnium et singularum prædict feudifirmarum et annuarum reddituum specialiter superius specificatorum et superioritatis antedict prefatis Preposito Ballivis Consulibus et communitati dicti burgi de Aberdeen et eorum successoribus destinat ad usum et effectum suprascript et non aliter, vel eorum certo actornato aut procuratore presentium latore per terre et lapidis fundi dictarum croftarum donationes ut moris est respective et successive tradatis et deliberetis seu aliter vestrum tradat et deliberet secundum tenorem supra script Cartæ meæ et presentis precepti Sasinæ in omnibus visis præsentibus sine dilatione Et hoc nullo modo omittatis ad quod faciendum vobis et vestrum cuilibet conjunctim et divisim Ballivis meis in hac parte antedictis meam plenariam et irrevocabilem tenore præsentium committo potestatem In cujus rei Testimonium Presentibus per Robertum Rawson secreti sigilli Scribam Deputatum scriptis ac subscriptione mea manuali subscript sigillum meum proprium est appensum apud Edr. primo die mensis Februarii anno Domini millesimo sexcentesimo quinto coram his testibus Magistro Richardo Douglas Fratre Germano Domini Quhethingame Georgio Hay de Monkton Magistro Georgio Tod Scriba Finlao Tailzeur Servitore dicti Domini Regis et dicto Roberto Rawson presentium Scriba Sic subscribitur Mr. Alex. Hay with my hand Mr. Richard Douglas, Witness, George Hay, as Witness, Mr. George Tod, Witness, Finlay Tailzeur, Witness, Robert Rawson, Writer hereof, Witness.

*Excerpts from the Accounts of the Bridge of Don Fund,
extending over the period from 1635 to 1875.*

	Sterling.
1750—Item of Fifty-four pound ten shilling six pennies (Scots), over-charged last year by mistake on the @ rents of the Debt due by the Town of Aberdeen,	£4 10 10
„ Item paid for repairing the Road from the Gallowgate-head to the Spithill-hill, per Act of Council, Accots. and Warrants,	50 0 0
„ Item paid for repairing that part of the Greenburn road, within the Freedom, per Act of Council, Accots. and Warrant,	93 18 2
1751—Item paid for repairing the Greenburn Road, per two Warrts.,	13 18 11
1752—Item paid for repairing the road and bridges near Scatterburn, per accmpt and ward.,	1 7 0
1753—Item paid for repairing the Bridge of Scatterburn, per ward.,	1 17 9
1754—Item paid for repairing the Roads to Hiltoun and Bridge of Don, per warrands,	22 1 6
1755—Item paid for repairing the Hiltoun Road, per Warrant,	3 0 6
1756—Item paid that was spent in Mrs. Fife's, anent repairing of the Road near the Bridge, per warrant,	1 10 10
„ Item paid George Moir, for repairing the Hiltoun Road, per Warrant,	4 6 0
„ Item paid James Rait, for do., per Act of Council,	15 0 0
„ Item paid for repairing the Road on the North of the Bridge of Don,	20 0 0
1757—Item paid the Compter's predecessor, which he paid for repairing the Road to the Bridge last year, per warrant,	0 13 5
„ Item paid the Compter, which he paid for repairing the road twixt Monthlie, and the Keystone, per Warrant,	3 0 0
„ Item paid Charles Forbes for repairing the Back causeway, per six warrands, leading to the Bridge of Don,	13 16 1
1758—Item paid for repairing the road, from the back of the Gallowgate to Old Aberdeen, per six warrants,	14 12 3
„ Item paid Mr. Middleton of Seaton, for mending roads leading to Old Aberdeen, as per Act of Council, and Mr. Middleton's letter and his Servant's receipt,	10 0 0
„ Item of Six hundred pound Scots paid this year to the Kirk charge, for helping to defray a part of the debt of that charge, as per Act of Council,	50 0 0
1759—Item paid for repairing the Tyrebaggar Road, per Act of Council,	10 0 0
„ Item of Two thousand four hundred pound (Scots), paid to Bridge of Dee charge, as part of the charges in repairing and streighting the Denburn, as per Act of Council,	200 0 0

1759—Item with six hundred pound Scots, paid this year to Kirk charge for helping to defray part of the debt of the same, per Act of Council,	£50	0	0
1760—Item paid that was allowed for repairing of the Tyre-baggar road, as per Act of Council, and Principal Chalmers' receipt,	20	0	0
„ Item paid for repairing the Road near the Bridge of Don, per ten warrands,	18	4	1
„ Item paid for making a Road through the Shoarlands (at Aberdeen), for the more easy transporting of carriages to the Bridge of Don, as per Act of Council, and 12 warrands,	68	4	11
„ Item paid to Robert Smith, Mason, for repairing the Bridge of Buxburn, as per Accot. and warrant,	8	12	0
„ Item paid to Richard Wallace, for Lead to the said Bridge, per Accot. and Ward,	2	4	5
„ Item of Fifty pound sterling, paid this year to the Kirk work charge, for helping to pay off the debt of that charge, as per Act of Council,	50	0	0
1761—Item paid for repairing the road leading to the Bridge of Don, per two warrands,	2	3	7
„ Item of Fifty pounds sterling, paid this year to the Kirk work charge, for helping to pay off the debt of that charge, as per Act of Council,	50	0	0
1762—Item paid William Mosman, for making out a road at the back of the Parks of Hiltoun, per Act of Council and discharge,	5	0	0
„ Item of Fifty Pounds sterling, paid this year to the Kirk work charge, for helping to pay off its debt, per Act of Council,	50	0	0
1763—Item paid for repairing the Bowl Road, and the Road to the Castlehill, per fifteen Warrands,	50	12	3
„ Item paid to David Deuchars, for repairing the Road at the back of the flesh Market, per eleven Warrands,	24	6	3
„ Item paid to Charles Forbes for Causeway work, at the end of the flesh Market, per six warrands,	21	12	6
„ Item paid John Thom for smith work about the Road leading to the Bridge, repairing the Workmen's Tools, and otherways, per Accot. and warrant,	7	0	0
„ Item paid Alex. Gordon, present Treasurer, which he debursed to Causewayers and Labourers, for repairing the Roads and Avenues leading to the Bridge, per 15 Warrands, delivered by him to the Compter,	34	7	1
„ Item paid more to Charles Forbes for Causeway work on the North End of the flesh market, per warrrd., 8th September,	4	7	8
„ Item of Fifty Pounds sterling, paid this year to the Kirk work charge, for helping to pay off its debt, per Act of Council,	50	0	0
„ Item paid to the Compter's Predecessor, which he payed out for Repairs about the Bridge of Don, and Roads leading thereto, per warrands,	26	1	8
1764—Item paid to the Compter's Predecessor, which he paid for repairing the Road at the back of the Gallowgate, after closing his accots., per 6 Warrands,	12	6	6
„ Item paid for making a Drain from the flesh Market through the new Street, per accot. and Warrant,	25	13	7
„ Item paid for repairing the Hilltoun road, per 10 Warrands,	20	11	9

1764—Item paid Charles Forbes, for repairing the Road to the Broadfoord, per 8 Warrands,	£23 6 9
„ Item paid Will. Leslie for spades to the Roads,	0 19 6
„ Item paid for building a bridge at Scatterburn, per accots. and warrd.,	14 18 4
„ Item paid for repairing the Hiltoun road, to the 6th September, per 4 Warrands,	7 9 8
„ Item paid to John Thom for Smith work to the Tools on the Roads, per accot. and warrand,	1 19 0
„ Item paid to Charles Forbes, for repairing the road to the Broadford, and for stones thereto, per 6 warrands, to the 6th of September,	14 6 7
„ Item of Fifty pounds sterling, paid this year to the Kirk work charge, for helping to pay off its debt, per Act of Council,	50 0 0
1765—Item paid to Mr. Ligertwood, for helping to build a Bridge on the Pottertown Road, per Act of Council,	5 0 0
„ Item paid Robert Cruickshank, for repairing the Hiltoun road, per 22 Warrands, to 29th August,	47 9 1
„ Item paid do., for repairing the Hiltoun road, to 5th September, per wd.,	2 15 3
„ Item of Fifty Pound sterling, paid this year to the Kirk work charge, for helping to pay off its debt, per Act of Council,	50 0 0
1766—Item paid for repairing the Hiltoun road, in September and October last, per 7 wards.,	13 8 11
„ Item paid Alexr. Inglis, sharpening picks to do., per warrand,	0 6 10
„ Item paid for repairing the Hiltoun road, in June and July last, per 9 warrands,	34 6 11
„ Item paid James Thain, for sharpening Picks to do.,	1 6 9
„ Item of Fifty Pound sterling, paid this year to the Kirk work charge, for helping to pay off its debt, as per Act of Council,	50 0 0
1767—Paid for repairing the road leading to the Bridge of Don by the Spithill, per 15 warrands,	43 7 3
„ Paid Robert Cruickshank, for repairing the road at Rottenholes, per 5 warrds.,	23 11 6
„ Paid David Deuchar, for causewaying the road near Rottenholes, per 13 warrands,	53 3 8
„ Paid John Cooper, for Wright work, anent repairing the roads, per accot.,	2 0 4
„ Item of Fifty pounds sterling, paid this year to the Kirk work charge, for helping to pay off its debt, as per Act of Council,	50 0 0
„ Item paid Robert Cruickshank, for repairing the Barkmilln road, per accot. and warrand,	3 13 8
„ Item paid Baillie Cushnie, for Spades to the roads, per warrd.,	0 17 0
1768—Paid for repairing the Roads about the Broadfoord and Barkmill, per eleven warrands,	35 15 7
„ Paid for repairing the Hiltoun Road, per 7 warrands,	16 10 10
„ Paid for repairing the Roads near the Bridge of Don, per 9 warrands,	24 6 9
„ Item of fifty pound sterling, paid this year to the Kirk work charge, for helping to pay off its debt, as per Act of Council,	50 0 0
1769—Paid for building a Bridge over the Denburn, near the Well of Spaw, per two warrands,	9 0 0

1769—Item of Fifty pound sterling, paid this year to the Kirk work charge, for helping to pay off its debt, as per Act of Council,	£50 0 0
1770—Item paid for repairing the Roads towards Buxburn, per 14 Warrands,	38 16 0
„ Item paid to Robert Cruickshank for repairing the Roads at the Bridge of Don, per 2 warrands,	2 11 7
„ Item paid to Mr. Orcherton, in Old Aberdeen, for helping to defray the expence of bringing in Spring water to Old Aberdeen, per ward. and receipt,	12 12 0
„ Paid to Robert Cruickshank for repairing the Roads, per warrand, 13 Septemr.,	2 10 0
„ Item of Fifty pound sterling, paid this year to the Kirk work charge, for helping to pay off its debt, as per Act of Council,	50 0 0
1771—Paid Robert Cruickshank, for repairing the road leading to Hilltoun and Buxburn, per 9 wards,	16 10 11
„ Paid Robert Cruickshank for repairing the roads, per 16 wards,	36 1 11
„ Item of Fifty pound sterling, paid this year to the Kirk work charge, for helping to pay off its debt, as per Act of Council,	50 0 0
„ Paid for repairing the Hiltoun road, per warrand, 5th September,	2 8 9
1772—Item of Fifty pound sterling, paid to the Kirkwork charge this year, for helping to pay off its debt,	50 0 0
„ Item paid Robert Cruickshank, per 10 warrands,	20 0 8
„ Paid said Robert Cruickshank for repairing the Road about the Bridge, per 11 warrands	16 18 9
1773—Item of Fifty pound sterling, paid to the Kirk work charge this year, per Act of Council,	50 0 0
„ Paid Robert Cruickshank for repairing the Roads about the Bridge, per four warrands,	7 8 6
„ Item paid John Ogilvy for ground taken off his property for enlarging one of the Avenues of the Bridge,	1 10 0
„ Paid Robert Cruickshank, for repairing roads, this year, per Twelve warrands,	27 5 2
1774—Item of Fifty pounds sterling, paid to the Kirkwork charge this year, per Act of Council,	50 0
„ Item paid by the Compter's predecessor to Robert Cruickshank, for repairing roads, per nine warrands,	18 19 6
„ Item paid Mr. Fraser of Fraserfield for repairing a Dangerous pass on the Road near to the Bridge, per Act of Council and Discharge,	5 0 0
„ Item paid Robert Cruickshank, for repairing the road at Causewayend, per two warrands,	3 17 10
1775—Item of Fifty pounds sterling, paid to the Kirk work charge this year, per Act of Council,	50 0 0
„ Item paid for repairing part of the Road leading to the Bridge, per warrd.,	5 2 1
1776—Item of Fifty pound sterling, paid to the Kirk work charge this year, per Act of Council,	50 0 0
„ Item paid Mr. Burnett of Kemnay, to be laid out in repairing the Tyrebaggar road, per Act of Council,	10 0 0
„ Item paid Robert Cruickshank, for repairing Roads leading to the Bridge this year, per four Warrands,	7 8 11
1777—Item of Fifty pounds sterling paid to the Kirk work charge this year, per Act of Council,	50 0 0
„ Item paid by the Compter's predecessor to Robert	

	Cruickshank for repairing the Road near to the Bridge, and the Hilltoun Road, per six Warrands, .	£12	10	4
1777—	Item paid by the Compter for repairing said Roads, per eight Warrands, .	14	6	5
„	Item paid Taylor and Skinner as an encouragement to them for their survey of the Roads of Scotland, per Acct. and Warrant, .	10	10	0
„	Item paid for helping to rebuild Powie's Bridge, per Act of Council and Wd., .	12	12	0
1778—	Item of Fifty pounds sterling paid to the Kirk work charge this year, per Act of Council, .	50	0	0
„	Item paid by the Compter's predecessor to Robert Cruickshank, for repairing Roads, per seven warrands, .	16	17	11
„	Item paid by the Counter to the said Robert Cruickshank for repairing Roads, per seven warrands, .	15	16	1
„	Item paid Mr. Burnett of Kemnay for repairing the Tyrebaggar Road, per Act of Council, .	3	3	0
1779—	Item of Fifty pounds sterling paid to the Kirk work charge this year, per Act of Council, .	50	0	0
1780—	Item of Fifty pounds sterling paid to the Kirk work charge this year, per Act of Council, .	50	0	0
„	Item paid as the charges proportion of One hundred guineas, granted by the Council, for building the Record Office, .	21	0	0
1781—	Item paid Lord Gardenstown towards building a House at Lawrancekirk, per Act of Council, and receipt, .	5	5	0
1782—	Item paid for repairing the road leading to the Bridge, per 3 warrands, .	10	4	6
1786—	Item paid by the Compter's predecessor, to the Dean of Guild, as the proportion payable by this charge, of the feu-duty of Meadow of . . . for four years preceding Whitsunday, 1785, .	5	11	1
1788—	Item of one hundred and ninety-two pounds, eight shillings and threepence, paid by the Compter to the Treasurer, per Act of Council, .	192	8	3
1789—	Item of One hundred Pounds and Five Pounds, paid to the Committee for carrying into execution the Building of the Bridges over Don and Urie, being the first moiety of the Subscription, in terms of Act of Council, 21st Jany., 1783, .	105	0	0
1791—	Item of One hundred pounds sterling, towards defraying the expense incurred in making out Roads, paid to the Shoremaster, which he had previously advanced, .	100	0	0
„	Item paid Mr. Ewen, Collector, for the Contributions for building the Bridges over Ythan, at Ellon, as the first moiety of the Town's subscription to that Bridge, per Act of Council, 28th February, 1789, .	52	10	0
1792—	Item for Building a Bridge at Brodiach, per Act of Council, .	30	0	0
„	Paid by the Compter's predecessor, for assisting to repair Bridges in the Ellon road, .	5	5	0
„	Paid, Chaise Hire and expence going out to visit the new Bridge building at Ellon, .	1	0	0
„	Paid for repairing the Tyrebaggar Road, per Act of Council, .	10	10	0
1793—	The Magistrates and Council having unanimously voted the Freedom of the City, to the Right Honourable Mr. Secretary Dundas, and directed to be delivered			

in a Gold Box, as a testimony of their sense of his conduct in Parliament, particularly in the great exertions used by him, in the repeal of the Coal Tax,		
1793—Paid for a superb Gold Box for the above purpose,	£110 0 0	
1794—Paid Mr. Ewen, Collector of the Contributions for building the Bridge over Ythan at Ellon, as the last moiety of the Town's Subscription to that Bridge, per Act of Council, 28th February, 1789,	52 10 0	
1795—Paid Mr. Charles Thomson, Treasurer to the Commissioners for building a Bridge at Montrose, the last moiety of the Town's Subscription to that Bridge, per Act of Council,	50 0 0	
„ Paid Mr. Charles Abercrombie, as the one half of his Accompt, for trouble and expense in making out a plan, survey, and estimate of General Improvements, betwixt the Bridges of Dee and Don,	44 0 0	
1796—Paid Mr. Fraser of Fraserfield, as the appreciated value of a House and Ground, which belonged to Him, and which was given off, in order to enlarge the access to the Bridge from the North,	16 0 0	
„ Allowed by the Compter to his predecessor at settling with him, one half of £274 16s. 9d., being the sum then super-expended upon the public roads in the neighbourhood of the Town, leading to and from the Bridge of Dee and Don, more than what had been received in name of Road Money, from the Inhabitants within the Burgh, and Liberties as per Statement in last year's accompts,	137 8 4	
1797—Paid the Magistrates of Old Aberdeen, for enabling them to carry on and complete, the Highway passing from Aberdeen thro' the Old Town to the Bridge of Don, per Act of Council, 20th May last,	21 0 0	
„ Paid sundry incidental expense, about the roads leading to the Bridge,	38 19 11	
„ Paid John Carey of London, for engraving Mr. Abercrombie's plan of proposed Improvements, in and about the town, accompanied with a small plate, for a varied Improvement, in order the same might be made known to the public in general, and for printing 200 sets of each, paper, carriage, &c., £57,		
„ Deduct received for 16 of said engraved plans, sold by the Booksellers in Town, the remainder being under sale, at 5s. each,	£4, 53 0 0	
1798—Paid Mr. Moir of Scotstown, laid out in repairing the road, from Seaton gate to the Bridge of Don,	15 0 0	
„ Paid sundry incidental expense, about the roads leading to the Bridge,	21 11 8	
„ Paid a proportion of Five hundred guineas, subscribed by the town, as an aid to Government (at the time of the Battle of the Nile), in terms of Act of Council,	157 10 0	
1799—Paid Baillie Farquharson, the sum allowed by Act of Council, 22nd March, 1796, towards building a Bridge over the burn of Tulloch,	10 0 0	
„ Allowed by the Compter to his predecessor, at settling with him, the sum then super-expended upon the Public roads in the neighbourhood of the Town, leading to and from the Bridges of Dee and Don, more than what had been received from the Inhabitants within the Burgh, and Liberties as per Statement in last year's acct.,	85 1	

1799—Paid Sundry incidental Expenses about the roads leading to the Bridge,	£15	7	0
„ Paid for plans and dimensions of the new Bridewell at Glasgow,	13	0	0
„ Paid the clerk to said Bridewell, for a copy of the accounts of the Income and Expense of the House, and mode of management therein,	2	0	0
„ Paid Reparations on the roads, betwixt the Bridges of Dee and Don, and other roads leading thereto, besides what has been hitherto recovered of the Road Money for the current year,	101	7	8
1800 Paid Aeneas Smith, the Town's Subscription, towards building a Bridge over the River Findhorn, per Act of Council, 23rd October, 1797,	50	0	0
„ Paid sundry incidental Expense, about the roads leading to the Bridge,	16	14	4
„ Paid Mr. Alexr. Carnegie, Town Clerk, a proportion of the sum allowed him annually, during life, in terms of Act of Council, 17th March last,	35	0	0
1801—Paid him do., do.,	35	0	0
„ Paid the public Kitchen, for the relief of the poor of the city, in the place of the dinner usually given at visiting the Bridges,	15	0	0
1802—Paid Mr. Alex. Carnegie, Town Clerk, a proportion of the sum allowed him annually, during life, per Act of Council,	35	0	0
1803—Paid him do., do.,	35	0	0
1804—Paid him do., do.,	35	0	0
1805—Paid him do., do.,	35	0	0
„ Paid Mr. Alexr. Gordon, Solicitor, London, his Bill of costs regarding the proposed Turnpike Road from Aberdeen, to join the present Road from Bridge of Don, to Ellon, per acct.,	68	12	8
1806—Paid Mr. Alex. Carnegie, Town Clerk, a proportion of the sum allowed him annually during life, per Act of Council	35	0	0
„ Paid one-half of the Town's Subscription for £200 to the Bridge lately built over the River Spey, near Fochabers. (See Act of Council, 10th Jany., 1793),	100	0	0
„ Paid in part of the Town's subscription to the Patriotic Fund at Lloyd's for relief of the sufferers in the Battle of Trafalgar,	52	10	0
1808—Paid Mr. Moir of Scotstown expended by him in repairing the approaches to the Bridge,	15	0	0
1815—Paid part of expense of compiling alphabetical Index to Council records,	50	0	0
1818—Paid towards payment of expense, in obtaining the Royal Warrant for electing Magistrates and Council, in 1818,	300	0	0
1820—Paid part of expense, due to Agents in Edinburgh and Aberdeen, incurred in opposing complaints, at the instance of Messrs. Mortimer & Gray, in 1818 (Reduction of Election of Magistrates and Town Council),	68	12	6
1821—Paid part of expense, incurred on the night of His Majesty's Coronation—Bonfire, entertainment to Guard, &c.,	50	5	7
„ Paid Mr. A. Mundell, Solicitor, London, his Bill of expenses for attendance on Scots Burgh Committee, in 1819-20-21,	118	13	0

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1850—Paid for Improvement of Spittal, and roads about Old Aberdeen,	£100	0	0
,, Paid to account of cost of levelling and macadamising King Street road, and causewaying part of it,	1448	7	7
1851—Paid farther for do.,	390	3	11
1861—Paid for forming plantation along that road. (The maintenance of the plantation and palings, on both sides of the road, and gravelling the footpaths, have since been paid out of the Bridge of Don Fund),	61	19	1
1863—Paid Mr. Beattie, Land Surveyor, for plan of Links, north of Broadhill, with Report and Specifications for improving the same, with new access to Bridge of Don,	53	15	6
1870—Paid to account of cost of division of Grandholm road at Bridgefield, near the old Bridge of Don, and of footpath thence to the Bridge,	329	16	6
1871—Paid to account of do.,	323	11	2
1872—Paid farther to account of do.,	79	2	8
1873—Paid balance of do.,	71	9	9

QUERY *annexed to Memorial submitted by the Magistrates and Town Council, for advice of Counsel, relative to the nature and extent of their powers, under Sir Alexander Hay's Deed of Mortification, for the repair and maintenance of the Bridge of Don, with*

OPINION *by Lord Advocate Rutherford (afterwards Lord Rutherford), and Mr. John Inglis, Advocate (now Lord President of the Court of Session).*

QUERY.

Whether, after setting apart a proper sum for the support and repair of the Old Bridge, the Memorialists are entitled to appropriate according to their own discretion, the surplus savings of the Bridge Fund, for the benefit of the City and Community ?

OPINION.

This is a case of considerable difficulty, and raises a question, which, so far as we know, is quite new in the construction of Trusts and Mortifications. The Gift is made to the Incorporation of the City of Aberdeen, for the purpose of maintaining a certain bridge, which was thought by the donor to be of great public importance, not only to that City, but to the North of Scotland generally ; and in his zeal and anxiety for the accomplishment of the object he had in view, he declares that the rents and feu-duties, which form the subject of the gift, shall be applied to the maintenance and repair of the bridge, and to no other purpose. The City had previously been put to considerable expense, and had applied portions of the common good to the same object, and it is presumable that the mortified rents and feu-duties, were of no greater amount than appeared to the Donor requisite, for securing the permanent maintenance of the fabric, and relieving the town in time coming. Relying on the Town's interest in the matter, he probably did not advert to the case of deficiency, and his not contemplating a surplus, may account for the absence of any provision for such an event. Still the Town are the Donees of a fund destined to a special purpose, to the exclusion of all others, and though some of the elements may be wanting that usually assist

decision in such cases, we think, upon the whole, the present case must be considered as one in which the gift is given, subject to a certain condition, and where the fulfilment of the condition in its largest extent leaves the surplus revenue free to the Donee. In this view, and adverting to what has recently been held, and particularly in the *Attorney General v. The Incorporation of Bristol*, 2, Jacobs and Walker, 320 ; *Attorney General v. Smythies* ; 2, Russel and Milne, 717 ; and *King's College v. Burnett* ; 12, Clark and Finelly, p. 812, We are of opinion, that in consequence of the necessary and inherent limitation, in the amount of funds which can, upon any ordinary or fair principle of administration, be expended upon the special object of the Mortification, Sir Alexander Hay's gift must be dealt with, as if it were made to the City of Aberdeen, subject to the obligation of maintaining the Bridge, and consequently that the surplus after satisfying that object to the fullest possible extent, must go to the Donees of the fund for their own use.

The opinion of—

(Signed),	AND. RUTHERFURD.
„	JOHN INGLIS.

EDINBURGH, *3rd April*, 1847.

QUERIES *submitted for advice of Counsel, by the Lord Provost, Magistrates, and Town Council of Aberdeen, relative to their interest in the accumulated savings of the Fund mortified by Sir Alexander Hay for the repair and maintenance of the Bridge of Don ; with*

OPINION *by the Dean of Faculty and Solicitor General (Watson), and Mr. McLaren, Advocate, Sheriff of Chancery, Author of a Treatise on the Law of Scotland in relation to Trusts ; and to Wills and Successions.*

There were also submitted with the Queries the Memorial laid before Lord Advocate Rutherford and Mr. John Inglis, Advocate, in 1847, and print of Notes by Mr. William Paul, Advocate in Aberdeen.

Query 1. Having in view the present state of the law and the facts recently ascertained, do Counsel concur in the opinion of Mr. Rutherford and Mr. Inglis submitted herewith ?

Answer. We concur in the opinion of Mr. Rutherford and Mr. Inglis, in which they state that this is a case of considerable difficulty, and raises a new question in the law of trusts, and conclude that, for the reasons there indicated, the surplus funds, after satisfying the object of the trust to the fullest possible extent, must go to the Donees of the Fund, to their own use. We think that Sir Alexander Hay intended to confer a direct pecuniary benefit on the Corporation of Aberdeen by relieving them of a part of the expense of maintaining the Bridge of Don, though no doubt he also regarded the maintenance of the Bridge as a benefit to the North of Scotland. As the Bridge Fund is more than adequate to the fulfilment of its primary purposes, including the rebuilding as well as the maintenance of the Bridge, and as the trust is incapable of extension, we think this is one of the cases in which a corporate body takes the residue of the mortified estate after making ample provision for the fulfilment of the trust.

We are of opinion that the Memorialists may safely and prudently apply the surplus revenue of the Bridge Fund to

Municipal purposes, and that the plea of *bona fide* consumption will protect them against any possible claims of accounting ; but we are not prepared to advise that they may prudently apply the capital of the Fund to other purposes than those of the Mortification, the question being treated in the opinion of Counsel as one of difficulty and novelty.

Query 2. Are any bodies or individuals (other than the Town Council and Community of Aberdeen) representing “the whole northern part of the Kingdom” entitled to require that the accumulated revenues of the Bridge of Don Fund, or any part thereof, shall be applied to purposes beneficial to themselves, but distinct from the repair and maintenance of the Bridge ?

Answer. We think not.

Query 3. Were the Town Council, while reserving an ample fund for the maintenance of the Bridge, and for rebuilding it if necessary, to expend from time to time portions of the accumulated savings for purposes to which it would be lawful to apply the common good of the Burgh, might the money so expended, in the event of successful challenge at any subsequent period, be competently replaced from the common good, and would any personal responsibility attach to the individual Members of the Town Council who sanctioned such expenditure ?

Answer. In the case suggested of a successful challenge of the Memorialists’ administration of the Bridge Fund, we think that the Corporation would probably be required to replace out of the common good such part of the Capital, consisting of the accumulated savings of the Trust, as they had applied to Municipal purposes. We are not aware of any case in which the Members of a Corporate body have been held personally responsible in circumstances such as are here supposed. In such cases, the question has generally been treated as one of accounting between the Corporation and the special Trust, the good faith of the administrators protecting them and their representatives from individual responsibility.

The opinion of

(Signed) WM. WATSON.
,, JOHN McLAREN.

EDINBURGH, 14th February, 1876.

At Aberdeen the Sixth day of March, in the year 1876, in presence of the Lord Provost, Magistrates and Council of the City of Aberdeen—

WHICH DAY there was laid before the Council a Report by their Improvements and Law Committees, of which the tenor follows, viz. :—

Improvements and Law Committees.

TOWN-HOUSE,
ABERDEEN, 17th February, 1876.

Report by the Improvements and Law Committees with reference to the Bridge of Don Fund.

Present :

The LORD PROVOST ; Baillie DONALD ; Baillie ROSS ; Baillie GRAHAM ; Baillie MITCHELL ; Baillie SMITH ; The DEAN OF GUILD ; The CITY TREASURER ; Messrs. WILLIAM PAUL, WILLIAM FINDLAY, WILLIAM BRUCE, WILLIAM STEVENSON, DAVID MACDONALD, and ALEXANDER COOK.

The LORD PROVOST, *Preses.*

The Committees beg to report that, in terms of the remit from the Council, of date the 1st of February, 1875, they have, at various Meetings, had under consideration the subject of the Bridge of Don Fund.

At the request of the Committees, a careful and exhaustive search of the Council Records was made by Mr. Francis Shaw, under the directions and superintendence of Mr. Paul, Convener of the Law Committee, and in the course of this search a large amount of important additional information was obtained with reference to the history of the Bridge of Don, and the relations of the Town and County in regard to it. From the information thus obtained, and the previously existing papers and documents, Mr. Paul compiled "Notes on the early history of the Brig of Balgowny, and illustrative of the position and legal aspect of the Fund conveyed by Sir Alexander Hay of Whytburgh and Newton, for its repair and maintenance, known "as the Bridge of Don Fund."

These notes were printed and circulated for the information of the Members of the Committees, and a copy is herewith laid before the Council.

The Committees had also before them the Memorial and Query which, in 1847, were submitted by the Magistrates and Town Council, for advice of Counsel, relative to the nature and extent of their powers under Sir Alexander Hay's Deed of Mortification for the repair and maintenance of the Bridge of Don—with the Opinion thereon of Lord Advocate Rutherford (afterwards Lord Rutherford), and Mr. John Inglis, Advocate (now Lord President of the Court of Session).

The Committees, after full deliberation, resolved to obtain the advice of Counsel relative to the interest of the Magistrates and Town Council in the accumulated savings of the fund mortified by Sir Alexander Hay for the repair and maintenance of the Bridge of Don. With this view, the

Committees appointed the Lord Provost, Baillie Donald, and Mr. Paul, along with the Town Clerk, as a Sub-Committee to proceed to Edinburgh—prepare and lay before Counsel the requisite Queries, along with the former Memorial, Query, and Opinion above referred to, and the Notes compiled by Mr. Paul—and obtain the Opinion of Counsel upon the Queries to be submitted.

The Sub-Committee accordingly proceeded to Edinburgh, and the Queries to be submitted to Counsel having been prepared, and adjusted with Mr. T. J. Gordon, W.S., were, along with the relative documents, laid before the Dean of Faculty and Solicitor General (Mr. William Watson), and Mr. John McLaren, Advocate, Sheriff of Chancery, for their opinion.

The opinion of these Counsel has now been received, and the Queries and opinion are herewith laid before the Town Council. Follows tenor thereof, viz. [These will be found printed at pages 51 and 52.]

Under these circumstances, the Committees beg to recommend that the Council should accept these repeated joint opinions of Scotch Counsel of the highest eminence as a safe guide for their future dealings with the Fund, and resolve to act upon the same.

GEORGE JAMIESON, *Preses.*

The Council having considered the said Report, it was moved by George Jamieson, Esq. of Rosebank, Lord Provost, that the Council approve of the Report, and adopt the recommendation of the Committees as therein contained, which motion was seconded by Alexander Walker, Esq., the Dean of Guild, and agreed to by the Council—Mr. Hutcheson dissenting.

The Council, at the same time, on the motion of the Lord Provost, passed a unanimous vote of thanks to Mr. Paul for the great service which he had rendered, as well as for the labour which he had bestowed, in connection with the investigation respecting the history of the Bridge and the position of the Fund.

